

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON D.C.

WELLINGTON INDUSTRIES, INC.,

Respondent,

-and-

Case No. 07-CA-061568

LOCAL 174, INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO,

Charging Party,

-and-

INDEPENDENT UNION LOCAL ONE,

Party to the Contract.

RESPONDENT, WELLINGTON INDUSTRIES, INC.'S
MOTION FOR RECONSIDERATION OF JANUARY 29, 2015 DECISION AND ORDER

Wellington Industries, Inc., through its attorneys, Kerr, Russell and Weber, PLC, and for its Motion Reconsideration, filed pursuant to Rules and Regulations §102.48(d)(1), 29 CFR 102.48(d)(1), states as follows:

1. That on July 30, 2012 a three-member panel (consisting of Chairman Pearce and Members Hayes and Block) of the National Labor Relations Board (the "Board") issued a Decision and Order in this matter.

2. That on August 13, 2012, Charged Party / Respondent Wellington Industries, Inc. ("Respondent" or "Wellington") filed a Motion for Reconsideration ("Wellington's First Motion for Reconsideration") of the Board's July 30, 2012 Decision and Order.

3. That on September 5, 2012, the Board (through Chairman Pearce and Members Hayes and Block) issued an Order denying Wellington's First Motion for Reconsideration.

4. That on or about October 5, 2012, Wellington filed a Petition for Review with the District of Columbia Court of Appeals, D.C. Circuit Court Case No. 12-1396.

5. That on or about November 1, 2012, the Board filed an Application for Enforcement with the District of Columbia Court of Appeals, D.C. Circuit Court Case No. 12-1435.

6. That on or about November 6, 2012, the D.C. Circuit Court issued a Clerk's Order consolidating D.C. Circuit Court Case No. 12-1396 and D.C. Circuit Court Case No. 12-1435 (collectively the "D.C. Circuit Appeal.")

7. That on January 25, 2013, the D.C. Circuit Court issued a Clerk's Order holding the D.C. Circuit Appeal in abeyance pending further order of the court.

8. That on June 26, 2014, the United States Supreme Court issued its opinion in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014) ("*Noel Canning*").

9. That *Noel Canning* held that President Obama's three "recess appointments" made January 4, 2012 were invalid and the Board was acting without a quorum from January 4, 2012 to July 30, 2013.

10. Following *Noel Canning*, on August 1, 2014, the D.C. Circuit Court issued an Order vacating the Board's July 30, 2012 Decision and Order in this matter, and remanding the D.C. Circuit Appeal to the Board for further proceedings.

11. That on January 29, 2015, the Board issued a Decision and Order in which it "considered the now vacated [July 30, 2012] Decision and Order" and agreed "with the rationale set forth therein," as modified by the January 29, 2015 Decision and Order and "affirmed the

judge's rulings, findings, and conclusions and adopt[ed] the judge's recommended Order" as modified for the "reasons stated in the Decision and order reported at 358 NLRB No. 90."

12. That Wellington incorporates herein its First Motion for Reconsideration, dated August 13, 2012.

13. That the first paragraph of footnote #2 of the Board's July 30, 2012 Decision and Order, which was adopted by the Board's January 29, 2015 Decision and Order states as follows:

In light of our disposition of this case, we find it unnecessary to pass on the judge's finding that IULO is validly affiliated with UAW Local 174. See Wellington Industries, 357 NLRB No. 135, slip op. at 1 fn. 1 (2011).

14. That the Board's January 29, 2015 Decision and Order once again declined to "pass on" the affiliation issue, with Member Miscimarra, in his concurrence, stating:

In this case, IULO represented the Respondent's bargaining unit employee. IULO members voted to affiliate with UAW Local 174, although the record indicates that relatively few unit employees (38 out of a total of 128) participated in the affiliation vote, which has prompted the Respondent to dispute the affiliation. My colleagues find it unnecessary to pass on the judge's finding that IULO is validly affiliated with UAW Local 174. I likewise do not reach it.

15. That the Board failed to address the issue of whether IULO is validly affiliated with UAW Local 174 in its July 30, 2012 Decision and Order and its January 29, 2015 Decision and Order.

16. That in two related cases (*Wellington I*, Case No. 07-CA-053182, 357 NLRB No. 135 (2011); *Wellington III*, Case No. 07-CA-091271, 360 NLRB No. 14 (2013)), the Board has similarly declined to pass on the issue of whether IULO is validly affiliated with UAW Local 174.

17. That for all the reasons set forth in the Exceptions and Supporting Briefs filed on behalf of Respondent in this case and the two related cases (*Wellington I*, Case No. 07-CA-053182, 357 NLRB No. 135 (2011); *Wellington III*, Case No. 07-CA-091271, 360 NLRB No. 14

(2013)), the Board should have made a determination that the affiliation between Independent Union Local One and UAW Local 174 was invalid.

18. That the Board's failure to consider ("pass on") the affiliation issue, both in its July 30, 2012 Decision and Order and its January 29, 2015 Decision and Order in this matter is an error in need of correction.

19. That the method for correcting such error is for the Board to fully consider all of the evidence and arguments submitted on behalf of Respondent in this case and in the two related cases and to ultimately make a determination that there was no valid affiliation and that the purported affiliation is an attempt by UAW Local 174 to supplant and replace the certified bargaining representative of the employees, Independent Union Local One (IULO).

20. That the Board's rejection of Respondent's argument is an error in need of correction.

21. That the method for correcting such error is for the Board to fully consider all of the evidence and arguments submitted on behalf of Respondent in this case in the two related cases (*Wellington I*, Case No. 07-CA-053182, 357 NLRB No. 135 (2011); *Wellington III*, Case No. 07-CA-091271, 360 NLRB No. 14 (2013)) and to ultimately make a determination that there was no valid affiliation and that the filing of the unfair labor practice charge was a further attempt by UAW Local 174 to supplant and replace the certified bargaining representative of the employees, Independent Union Local One.

22. That the Board committed material error in its portion of the Order which stated:

The National Labor Relations Board orders that the Respondent, Wellington Industries, Inc., Belleville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Independent Union Local One (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(b) Breaching its obligation to bargain in good faith with the Union concerning grievances by refusing to deal with the representative designated by the Union to assist it with grievance processing.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information requested by the Union on July 12, 2011.

(b) Within 14 days after service by the Region, post at its Belleville, Michigan facility copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since mid-July 2011.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 29, 2015

23. That the portion of the Board's decision cited in ¶22 constituted material error because the Board Ordered Respondent to cease and desist from certain actions and to take affirmative corrective actions without first making a determination as to the validity of the

affiliation between IULO and UAW Local 174 which is essential to any order requiring Respondent to deal with representatives of UAW Local 174.

24. That the method for correcting such error is for the Board to fully consider all of the evidence and arguments submitted on behalf of Respondent in this case and the two related cases (*Wellington I*, Case No. 07-CA-053182, 357 NLRB No. 135 (2011); *Wellington III*, Case No. 07-CA-091271, 360 NLRB No. 14 (2013)) and to ultimately make a determination that there was no valid affiliation and that the filing of the unfair labor practice charge was a further attempt by UAW Local 174 to supplant and replace the certified bargaining representative of the employees, IULO.

WHEREFORE, based upon the foregoing, it is submitted that the Board should reconsider its January 29, 2015 Decision and Order in this matter in light of the Exceptions and Supporting Briefs filed in this case and the two related cases (*Wellington I*, Case No. 07-CA-053182, 357 NLRB No. 135 (2011); *Wellington III*, Case No. 07-CA-091271, 360 NLRB No. 14 (2013)) and should correct those errors and reverse its January 29, 2015 Decision and Order, including the remedies Ordered by the Board, and dismiss the unfair labor practice charge.

Respectfully submitted,

KERR, RUSSELL AND WEBER, PLC

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Dated: February 19, 2015

UNITED STATES OF AMERICA
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WELLINGTON INDUSTRIES, INC.,

Respondent,

-and-

Case No. 07-CA-091271

LOCAL 174, INTERNATIONAL UNION, UNITED
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IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO,

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INDEPENDENT UNION LOCAL ONE,

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CERTIFICATION OF SERVICE

I hereby certify that on February 19, 2015, a copy of the foregoing *Motion for Reconsideration of Respondent, Wellington Industries, Inc.*, together with a copy of this *Certification of Service*, were served upon the following parties/attorney(s) of record by "E-filing," electronic mail (where applicable), and/or regular U.S. mail at their stated business address(es).

Terry A. Morgan National Labor Relations Board — Region 7 477 Michigan Avenue, Room 300 Detroit, MI 48226	Robert Fetter Counsel for the Charging Party Miller Cohen, PLC 600 W. Lafayette Blvd. Fl 4 Detroit, MI 48226 rfetter@millercohen.com
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Linda Dreeben National Labor Relations Board 1099 14 TH Street, NW, Suite 8100 Washington, DC 20570	Mark D. Baines Compliance Officer – Region 7 National Labor Relations Board 477 Michigan Avenue, Room 300 Detroit, MI 48226
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Dated: February 19, 2015